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CAHAYA BARU DEVELOPMENT BHD

v.

LEMBAGA LEBUHRAYA MALAYSIA

B

HIGH COURT MALAYA, JOHOR BAHRU
VERNON ONG LAM KIAT JC
[ORIGINATING SUMMONS NO: (MT-1) 24-377-2007]
20 OCTOBER 2008

C ***LAND LAW:*** *Acquisition of land - Compensation - Award by Land Administrator - Objection to amount of compensation - Whether defendant prohibited from filing Form N pursuant to s. 38(1) Land Acquisition Act 1960 ('LAA') - Whether defendant was a person interested within meaning of s. 37(3) of the LAA - Whether Form N filed by defendant* D *wrong, void, invalid and of no legal effect*

This originating summons (encl. 2) by the plaintiff was, *inter alia*, for a declaration that (i) the defendant was not entitled and was prohibited from filing Form N pursuant to s. 38(1) Land E Acquisition Act 1960 ('LAA'); (ii) the Form N filed by the defendant was wrong, void, invalid and of no legal effect. Briefly, the plaintiff was the registered owner of a piece of property ('the land'). Upon the conclusion of the enquiry under s. 12 LAA relating to the land, the land administrator awarded the sum of F RM30,734,903 and issued a 'written award of compensation' (Form G) pursuant to s. 14 LAA. The plaintiff accepted the said offer of compensation. Meanwhile, the defendant filed 'Application That An Objection Be Referred To Court' (Form N). According to the Form N, the defendant's interest in the land was as a G person interested pursuant to s. 37(3) LAA. The defendant's objection was related to the amount of the compensation. As a result of the defendant's objection in the Form N, the land administrator made payment of seventy five percent of the amount of the award and withheld twenty five percent pursuant to s. 29A H LAA. The principal issue to be determined was whether the defendant was a person interested within the meaning of s. 37 of the LLA.

Held (granting order in terms of plaintiff's application):

I **(1)** The acquisition of the land was made under s. 3(1)(a) of the LLA by the State Authority for the Ministry of Public Works. Applying the criteria in s. 37(3) LLA, the person interested

would be the Ministry of Public Works Malaysia. The defendant was a body corporate established under the Highway Authority Malaysia (Incorporation) Act 1980 ('HAMA').In the premises, the defendant's contention that it was a person interested and as such was entitled to lodge the Form N objecting to the amount of the compensation awarded was without any basis and unsupported by the notification in the State Gazette. (paras 8 & 9)

Case(s) referred to:

Gudang-Desaru Expressway project (citing Universiti Malaya (pemilik tanah) & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 3 AMR 341 ***(refd)***

Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor [1995] 4 CLJ 477 CA ***(refd)***

Universiti Malaya & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 2 CLJ 605 HC ***(dist)***

Legislation referred to:

Highway Authority Malaysia (Incorporation) Act 1980, ss. 3(1), 22

Land Acquisition Act 1960, ss. 3(1)(a), 12, 14, 29A, 37(3), 38(1), 44(2)

For the plaintiff - Husni Abdullah (Zakaria Ahmad with him); M/s Abdul Hakim Abdul Rahman & Co

For the defendant - Nasarudin Abdul Manaf; M/s Ikmal & Rakan-Rakan

Reported by Suhainah Wahiduddin

JUDGMENT

Vernon Ong Lam Kiat JC:

[1] This originating summons (encl. 2) by the plaintiff is, *inter alia*, for a declaration that (i) the defendant is not entitled and is prohibited from filing Form N pursuant to s. 38(1) Land Acquisition Act 1960 ('LAA'); (ii) the Form N filed by the defendant is wrong, void, invalid and of no legal effect. The following affidavits were filed in connection herewith:

(1) Plaintiff's affidavit in support affirmed on 2 February 2007 encl. 3

A (2) Defendant's affidavit in reply affirmed on 5 April 2007 encl. 6

(3) Plaintiff's affidavit in reply affirmed on 13 April 2007 encl. 7

B

Brief Account Of The Facts

[2] The plaintiff is the registered owner of the property held under document of title PTD 171003 H.S.(M) 2996 Mukim Plentong Daerah Johor Bahru Negeri Johor ('the Land'). On C 18 November 2004 a 'Declaration Of Intended Acquisition' of the Land was published in the Johor State Government Gazette ('State Gazette') under Notification No. 2390 by the Land and Mines Office Johor ('State Authority') in the following terms:

D It is hereby declared that the particular lands and areas specified in the Schedule hereto are needed for the following purpose:

> Land Acquisition Under Paragraph *(sic)* 3(1)(a) of the Land Acquisition Act 1960 (Act 486), For The Purpose Of The Construction Of Senai-Pasir Gudang-Desaru Expressway, E Mukim Senai-Kulai, Tebrau, Plentong And Sungai Tiram, Johor Bahru For Ministry Of Public Works, Malaysia.

Upon the conclusion of the enquiry under s. 12 LAA relating to the Land the Penolong Pentadbir Tanah, Johor Bahru ('Land F Administrator') awarded the sum of RM30,734,903 and issued a 'Written Award Of Compensation' (Form G) pursuant to s. 14 LAA. The plaintiff accepted the said offer of compensation. Meanwhile the defendant filed 'Application That An Objection Be Referred To Court' (Form N) dated 25 May 2006. According to G the Form N, the defendant's interest in the land is as a person interested pursuant to s. 37(3) LAA. The defendant's objection relates to the amount of the compensation. As a result of the defendant's objection in the Form N the Land Administrator made payment of seventy-five percent of the amount of the award and H withheld twenty-five percent pursuant to s. 29A LAA.

Fact In Issue

[3] The principal issue to be determined is whether the defendant is a person interested within the meaning of s. 37. If I the question is answered in the affirmative, then the defendant is entitled to object to the award of compensation and to file the Form N to the land administrator requiring that he refer the matter to court for its determination. Section 37 is as follows:

37 Application to Court

(1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:

(a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

(2) Where the total amount awarded in compensation in respect of any interest in any scheduled land does not exceed three thousand ringgit the written award of the Land Administrator shall be final with regard to both the measurement of the land and the amount of compensation awarded, and no objection may be made under subsection (1) in respect thereof.

(3) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to section 3, shall be deemed to be a person interested in any schedule land under subsection (1), and may make objections on any of the grounds specified in subsection (1).

In this connection it is also pertinent to look at s. 3(1)(a) under which the acquisition of the land was made.

3 Acquisition of land

(1) The State Authority may acquire any land which is needed:

(a) for any public purpose;

(b) by any person or corporation for any purpose which in the opinion of the state Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

(c) for the purpose of mining or for residential, agricultural, commercial or industrial or recreational purposes or any combination of such purposes.

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Plaintiff's Submission

[4] Learned counsel for the plaintiff submitted that in this case the Land was acquired by the State Authority for a public purpose under para. (a) in s. 3(1). The Form N lodged by the defendant under s. 37(3) is premised on the basis that the defendant is a person interested in the land. Under the LAA the acquisition of land for public purpose is only permitted under para. (a) in s. 3(1). In contrast, para. (b) in s. 3(1) provides for the acquisition of land by any person or corporation in the circumstances enumerated therein. Therefore the acquisition of the land under s. 3(1)(a) rules out the involvement of the defendant as the land is acquired by the State Authority for a public purpose (relying on *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor* [1995] 4 CLJ 477 CA).

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Defendant's Submission

[5] Learned counsel for the defendant submitted that the defendant is a body corporate established under s. 3(1) of the Highway Authority Malaysia (Incorporation) Act 1980 ('HAMA'). The defendant's power to acquire land is provided under s. 22 HAMA which provides that:

> **22. General power to acquire land.**
>
> (1) Where any immovable property, not being State land or reserved land is needed to be acquired for the purpose of this Act and cannot be acquired by agreement, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force in the State in which the property is situated and any declaration required under any such written law that the land is so needed may be made notwithstanding the compensation is to be paid out of the funds of the Authority, and the said declaration shall have effect as if it were a declaration that the land is needed for a public purpose made in accordance with the said written law.
>
> (2) Expenses and compensation in respect of any immovable property acquired under this section shall be paid by the Authority.

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(3) Where any immoveable property has been acquired under this section, the Authority shall take out the necessary document of title in respect of the property and shall pay any rent to which the property is subject.

It is the intention of the legislature that under s. 22 HAMA the State Authority may acquire land for public purpose for the defendant's use. The words 'public purpose' in the gazette published by the State Authority includes the defendant because the defendant is involved in the *Gudang-Desaru Expressway project (citing Universiti Malaya (pemilik tanah) & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 3 AMR 341).

[6] According to the defendant's affidavit the defendant has been given the responsibility by the Ministry of Public Works, Malaysia and the Malaysian Government under HAMA to supervise and execute inter-urban highway including Senai-Pasir Gudang Expressway project. In order to realise the said project the defendant had to acquire land under the LAA. Even though the land had been acquired by the State Authority for a public purpose it involves the defendant as the public purpose concerned is the Gudang Desaru Expressway project. The defendant is a person interested because the compensation for the land was paid by the defendant to the Land Administrator.

Finding Of The Court

[7] The question as to the defendant's eligibility to lodge the Form N depends on whether the defendant is 'a person interested' within the meaning of s. 37(3). According to s. 37(3) 'a person interested' is a person on whose behalf the land was acquired pursuant to s. 3. In the present case the acquisition by the State Authority was made under s. 3(1)(a) – 'for any public purpose'. Is there anything in the Notification in the State Gazette to state or otherwise indicate that the acquisition of the Land is needed by the defendant for the Gudang-Desaru Expressway project? There is, upon close scrutiny of the Notification, no reference to or mention of the defendant or of the defendant's involvement in the Gudang-Desaru Expressway project. According to the Notification in the State Gazette, the Land is being acquired by the State Authority for the Ministry of Public Works, Malaysia.

[8] It is pertinent to note that the defendant is a body corporate established under the HAMA. There is a specific enabling provision in para. (b) in s. 3(1) empowering the State Authority to acquire land which is needed by any corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia. On the facts as disclosed by the affidavit evidence it is clear that the State Authority acquired the land for the Ministry of Public Works, Malaysia for "any public purpose'" under para. (a) in s. 3(1). The State Authority did not acquire the Land under para. (b) in s. 3(1). It would be stretching the facts to conclude that notwithstanding the clear and express words in the Notification in the State Gazette the acquisition of the land by the State Authority was made because the land was needed by the defendant.

[9] According to s. 37(3) any person or corporation on whose behalf the Land was acquired pursuant to s. 3 shall be deemed to be a person interested in the land. The Notification in the State Gazette declares that the intended acquisition is made for the Ministry of Public Works, Malaysia. Applying the criteria in s. 37(3) the person interested would be the Ministry of Public Works, Malaysia. The defendant's contention is, however, that the defendant is empowered under the HAMA to hold movable and immovable property (s. 3(1)). Further, when any immovable property is needed to be acquired and cannot be acquired by agreement, such property may be acquired in accordance with the provisions of any written law (s. 22). The reference to 'any written law' would include the LAA. Accordingly, learned counsel for the defendant submitted that in the present case as the land was acquired for the purpose of the Gudang-Desaru Expressway project, it must be inferred that the Land was acquired for the defendant. The defendant's contention, however, is unsupported by the wordings of the Notification in the State Gazette which state unequivocally that the acquisition of the Land is made for the Ministry of Public Works, Malaysia. If the defendant's contention is correct, then the acquisition by the State Authority would have been made under para. (b) of s. 3(1).

[10] In *Universiti Malaya & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 605 HC two pieces of land ('the said land') owned by Universiti Malaya ('UM') were acquired for Projek Lebuhraya Skim Penyuraian Trafik Kuala

Lumpur ('the project'). Lembaga Lebuhraya Malaysia ('LLM') was the party who applied to acquire the said land. The first enquiry was held under s. 12 LAA in the presence of representatives from UM and LLM. At the end of the enquiry, the land administrator had made a decision that any party dissatisfied with the award and/or compensation made could file an objection in Form N in accordance with s. 38 LAA. UM and the government valuer submitted their valuation reports and the government valuation was accepted as fair and reasonable by the land administrator. LLM filed Form N to object to the amount of compensation awarded by the land administrator. UM objected to the filing and applied to court that the referral to review the valuation of the land should be struck off or dismissed as LLM had not submitted their valuation at the inquiry and were precluded from filing an objection *via* Form N. There were two issues before the court: (i) whether the decision by the land administrator was judicial or administrative; and (ii) whether LLM has a right to object to the finding of the land administrator. The High Court held that: (i) the decision by the land administrator is an administrative decision. Any objection under s. 38(1) is a reference to the High Court and is in the nature of an original hearing. Further s. 44(2) empowers the court to consider the interest of all parties, and (ii) the acquisition of the said land was for the LLM, hence their presence during the inquiry, and to strike out the LLM's application would take away his rights as enunciated under s. 44(2). In that case, however, there are two distinguishing features. Firstly, the acquisition was made under para. (b) in s. 3(1) unlike the present case where the acquisition of the Land was made under para. (a) in s. 3(1). Secondly, in that case LLM was present at the hearing of the enquiry before the land administrator whereas in the present case there is nothing in the affidavit evidence of the plaintiff and the defendant to indicate if the defendant was present at the hearing of the enquiry or at all. Accordingly this case is peculiar on its own facts and is of no aid to the defendant's contention.

[11] In *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor* [1995] 4 CLJ 477 CA a piece of land was acquired by the appellant a statutory body with power to undertake ventures of a commercial or industrial nature independently or jointly with another company. The registered proprietors were awarded compensation of RM19,735,280 by the

collector. The appellant objected to the amount of the compensation which they claimed was excessive. The issue for determination before the Court of Appeal was whether the appellant is a person interested in the scheduled land under the LAA and may make an objection to the collector and require him to refer to the court as regards the amount of compensation which the appellant alleges is excessive. The Court of Appeal held that the term 'person interested' in s. 37(3), includes every person claiming an interest in the compensation to be made on account of the acquisition of land under the LAA. However, acquiring land for a public purpose could only come under s. 3(1)(a) of the LAA and nowhere else and this rules out the involvement of any other person or corporation on whose behalf the scheduled land is acquired by the State Authority. In the result the Court of Appeal held that the appellant was not a person interested in the first place. Abdul Malek b Hj Ahmad J (as he then was) speaking for the Court of Appeal said:

> A proper reading of s. 3 then and now makes it clear that the State Authority acquires for itself for the purposes under para (a) and (c) but acquires on behalf of another under para (b) and that is only for a person or corporation undertaking a work which in their opinion is of public utility up to September 12,1991 and only for a person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public after the September 13,1991. This reasoning fits in nicely with the word, "and on whose behalf such land was acquired pursuant to the provisions of s. 3," because that was what it is and should be namely that it was acquired by the State Authority on their behalf.

[12] Similarly in the present case the acquisition of the Land was made under s. 3(1)(a) by the State Authority for the Ministry of Public Works, Malaysia for "any public purpose'". If the acquisition was made for any person or corporation under s. 3(1)(b), then there may be merit in the argument that the defendant is a person interested within the meaning of s. 37(3). In the premises the defendant's contention that it is a person interested and as such is entitled to lodge the Form N objecting to the amount of the compensation awarded is without any basis and unsupported by the Notification in the State Gazette. For the above reasons the court grants an order in terms of the plaintiff's application in prayers (1), (2), (3) and (4).